



April 13, 1999

Mr. Gregory T. Simpson
Director, Employment/Administrative Law
Legal Services Division
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495

OR99-1013

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123338.

The General Land Office (the "GLO") received a request for information relating to property sold or leased pursuant to the Texas Relinquishment Act. You state that the GLO will make many of the requested documents available to the requestor. You contend that the remaining documents at issue are excepted from disclosure pursuant to sections 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.²

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. ORD 574 at 5. Section 552.107(1) does not except purely factual information from disclosure, nor does it protect information gathered by an attorney as a fact-finder. Open Records Decision Nos. 574 (1990), 559 (1990), 462 (1987). Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. ORD 574 at 5. A

¹You also raised section 552.113 of the Government Code but withdrew that claim after discovering that none of the documents at issue are protected by section 552.113.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental body may waive the protection of section 552.107(1) by voluntarily disclosing privileged material to outside parties. Open Records Decision No. 630 at 4 (1994).

You contend that the documents submitted under Tab I are excepted from disclosure pursuant to section 552.107(1). We agree that some of the information in these documents is protected by section 552.107(1), and we have marked this information accordingly. The GLO must publicly disclose the remaining information under Tab I.

You contend that the documents submitted under Tab II are excepted from disclosure under section 552.111 as attorney work product. A governmental body may withhold attorney work product from disclosure if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. ORD 647 at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

Having reviewed your arguments and the documents under Tab II, we conclude that you have met both prongs of the attorney work product test for the documents under Tab II. Accordingly, the GLO may withhold the documents under Tab II from disclosure pursuant to section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 123338

encl. Marked documents

cc: Mr. Matt Dow
Craig, Small & Werkenthin
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(w/o enclosures)